

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product List
Adding Round-Trip Mailer

Docket No. MC2013-57

Competitive Product Prices
Round-Trip Mailer (MC2013-57)

Docket No. CP2013-75

ORDER GRANTING MOTION FOR LEAVE TO FILE ADDITIONAL COMMENTS

(Issued September 4, 2013)

I. INTRODUCTION

Pursuant to 39 C.F.R. § 3020.34, the Commission is adopting further procedures in Docket Nos. MC2013-57 and CP2013-75 to consider the Postal Service's request to transfer existing market dominant mailer options for round-trip DVD mail to the competitive product list, tentatively called "Round-Trip Mailer."¹ The Request and proposed Mail Classification Schedule (MCS) changes were previously assigned to Docket No. MC2013-57 and the proposed rates relating to the Request were assigned

¹ Docket No. C2009-1R, Request of the United States Postal Service Under Section 3642 to Create Round-Trip Mailer Product, July 26, 2013, at 2 (Request). The Request is made pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq. Id.* at 3.

to Docket No. CP2013-75.² As directed by the Commission in Order No. 1794, the Postal Service filed additional supporting information on August 2, 2013 and August 5, 2013.³

On August 15, 2013, both Netflix, Inc. (Netflix) and GameFly, Inc. (GameFly) filed comments addressing the Postal Service Request.⁴ Netflix urges the Commission to deny the Request. Netflix Comments at 9. GameFly also opposes the Postal Service request, arguing that its approval would leave users of DVD mail “unprotected against unreasonably high prices.” GameFly Comments at 2. Attached to the GameFly Comments was the Declaration of David Hodess, GameFly’s President and CEO. (Attachment A). Also accompanying GameFly’s comments was the non-public Declaration of Sander Glick.⁵

² Docket Nos. C2009-1R, MC2013-57, and CP2013-75, Notice and Order on Request to Add Round-Trip Mailer Product to Competitive Product List, July 30, 2013, at 5, Ordering Paragraph 1 (Order No. 1794). The Request was originally filed by the Postal Service in Docket No. C2009-1R “to ensure compliance” with Order No. 1763, Order on Remand, June 26, 2013, pending Commission action on a Postal Service motion for reconsideration and clarification. See Docket No. C2009-1R, United States Postal Service Motion for Reconsideration and Clarification of Order No. 1763, July 25, 2013 (Motion for Reconsideration and Clarification). The Commission denied reconsideration, but granted clarification on August 13, 2013. Order No. 1807, Order on Reconsideration and Clarification, August 13, 2013. By separate order issued simultaneously herewith, the Commission is prescribing the rate levels proposed by the Postal Service in Docket No. CP2013-75 as the market dominant rates applicable to the existing First-Class Round-Trip DVD letter and flats rate categories effective September 30, 2013.

³ Docket Nos. C2009-1-R, *et al.*, Notice of Board of Governors Determination, August 2, 2013 (Governors’ Determination); and Response to Order No. 1794 and Notice of Filing of Nonpublic Library Reference USPS-MC2013-57/NP-1, August 5, 2013 (Response/Library Reference NP-1).

⁴ Docket No. MC2013-57, Comments of Netflix, Inc., August 15, 2013 (Netflix Comments); and Docket Nos. C2009-1R, *et al.*, Comments of GameFly, Inc. on USPS Proposal to Reclassify DVD Mailers as Competitive Products, August 15, 2013 (GameFly Comments).

⁵ This declaration was originally filed as a non-public document. Docket No. C2009-1R, Application of GameFly, Inc., for Non-Public Treatment of Declaration of Sander Glick, August 15, 2013. GameFly subsequently withdrew the request for non-public treatment. Docket No. C2009-1R, Notice of GameFly, Inc., of Withdrawal of Application for Non-Public Treatment of Declaration of Sander Glick, August 19, 2013.

On August 22, 2013, the Postal Service filed comments in reply to Netflix and GameFly.⁶ The Postal Service also filed material under seal as a Category 4 non-public library reference.⁷

On August 22, 2013, the Public Representative filed reply comments alleging that the Postal Service had failed to comply with the requirements for transfers of products between the market dominant and competitive product lists imposed by 39 U.S.C. § 3642(b)(3)(B) and (C) by failing to give due regard to the views of those persons who use the product involved and to the likely impact of the proposed transfer on small business concerns.⁸ Two small business concerns also filed reply comments in Docket No. MC2013-57 on August 22, 2013, opposing the Postal Service's request.⁹

On August 26, 2013, GameFly filed a motion requesting the Commission to: (1) dismiss the Postal Service Request; (2) strike the Postal Service Reply Comments; or (3) provide 20 days from the date that GameFly was provided access to non-public Library References NP-3 through NP-6 to respond to the Postal Service Reply

⁶ Docket Nos. MC2013-57 and CP2013-75, United States Postal Service Reply to Comments, August 22, 2013 (Postal Service Reply Comments).

⁷ Docket Nos. C2009-1R, *et al.*, Notice of Filing of Nonpublic Library Reference USPS-MC2013-57/NP2, August 22, 2013. On August 26, 2013, the Postal Service withdrew Library Reference USPS-MC2013-57/NP2. Docket Nos. C2009-1R, *et al.*, Notice of Withdrawal of Library Reference USPS-MC2013-57/NP2, August 26, 2013. In place of the withdrawn library reference, the Postal Service filed four new library references. Docket Nos. C2009-1R, *et al.*, Notice of Filing of Nonpublic Library References, August 26, 2013 (Library References NP3 through NP-6). The Commission has granted Netflix and GameFly access to the non-public material filed by the Postal Service. Order No. 1816, Docket Nos. C2009-1R, *et al.*, Order Granting Requests for Access, August 26, 2013; Order No. 1818, Docket Nos. C2009-1R, *et al.*, Order Granting Additional Request for Access, August 28, 2013.

⁸ Docket Nos. C2009-1R, *et al.*, Reply Comments of the Public Representative in Response to Commission Order No. 1794, August 22, 2013.

⁹ Docket No. MC2013-57, Comments of MMAVault in Response to Commission Order No. 1794, August 22, 2013; and Docket No. MC2013-57, Reply Comments of CafeDVD in Response to Commission Order No. 1794, August 22, 2013. CafeDVD also opposes the proposed minimum volume requirements on outbound pieces of the proposed Round-Trip Mailer product.

Comments.¹⁰ GameFly also requests “relief from the Postal Service’s unlawful discrimination without further delay.” *Id.* at 3.

The Postal Service answered the GameFly Motion on August 30, 2013.¹¹ In its Answer, the Postal Service argues that: (1) its initial request met the requirements of 39 U.S.C. § 3642(b)(1) and 39 C.F.R. § 3020.32(d); (2) its Reply Comments provide rebuttal evidence directly contradicting assertions in the Netflix Comments and the GameFly Comments; and (3) it would be unreasonable to allow GameFly 20 days to file a surreply. *Id.* at 3-9. The Postal Service requests that the Commission deny the GameFly Motion in its entirety or, in the alternative, limit the time for GameFly’s response and permit the Postal Service to respond to any new issues or facts raised by GameFly’s response. *Id.* at 10.

II. STATUTORY AUTHORITY TO ADD NEW PRODUCTS AND REGULATORY REQUIREMENTS

The addition of new products to the market dominant or competitive product lists is authorized by 39 U.S.C. § 3642. Section 3642(b) provides that Commission determinations regarding whether products should be added to, removed from, or transferred between the market dominant and competitive product lists shall be made in accordance with the following criteria:

- (1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

¹⁰ Docket Nos. C2009-1R, *et al.*, Motion of GameFly, Inc., for Relief with Respect to the August 22 Reply Comments of the Postal Service, August 26, 2013 (GameFly Motion).

¹¹ Docket Nos. C2009-1R, *et al.*, United States Postal Service Answer to Motion of GameFly, Inc. for Relief with Respect to the August 22 “Reply” Comments of the Postal Service, August 30, 2013 (Postal Service Answer).

The competitive category of products shall consist of all other products.

(2) Exclusion of products covered by postal monopoly.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term ‘product covered by the postal monopoly’ means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exceptions as set forth in the last sentence of section 409(e)(1).

(3) Additional considerations.—In making any decision under this section, due regard shall be given to—

(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

(B) the views of those who use the product involved on the appropriateness of the proposed action; and

(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

Regulations governing Postal Service requests to modify the product lists are contained in 39 C.F.R. 3020, subpart B. Section 3020.32 specifies information that must be included in the Postal Service’s supporting justification for its Request.

III. PRODUCT DESCRIPTION

The existing Letter Round-Trip Mailer and Flat Round-Trip Mailer classifications in First-Class Mail were established by Order No. 718, in response to the Commission’s finding of discrimination in Docket No. C2009-1.¹² The Postal Service asserts that the proposed Round-Trip Mailer product would be “functionally similar” to the existing First-Class Mail Round-Trip Mailer. Request, Attachment A at 1. It further states that

¹² Docket No. C2009-1, Order on Complaint, April 20, 2011, Appendix B (Order No. 718).

“service standards and processing elements” of the proposed product would be “identical to the service currently received by First-Class Mail letters and flats.” Request at 3.

The Postal Service contends that, although the existing First-Class Mail Round-Trip Mailer is currently classified as market dominant, it fulfills all of the criteria for competitive products under 39 U.S.C. § 3633. *Id.* Attachment A at 2-3. The Postal Service describes the proposed Round-Trip Mailer product as one that competes with “newer and increasingly dominant forms of digital content delivery,” such as online streaming and physical DVD rental services. *Id.* at 4. However, it acknowledges that it is not aware of “another shipping company that provides door-to-door delivery of optical discs such as DVDs.” *Id.* at 3. The Postal Service argues that the proposed product is “outside the scope of the letter monopoly because it is not a letter, or because the letter content is within the scope of one of the exceptions/suspensions to the Private Express Statutes.” *Id.* at 5. It bases this argument on the content of the proposed product, which would be limited to optical discs, invoices, and advertisements. *Id.*

IV. SUPPORT FOR THE POSTAL SERVICE REQUEST

Support for the Postal Service Request is contained in the Request, the Postal Service’s response to Order No. 1764, and in the Postal Service Reply Comments and accompanying non-public material filed with the Commission.

Request. The Request includes the following supporting material:

- Attachment A—a Statement of Supporting Justification addressing applicable 39 C.F.R. Part 3020, subpart B requirements;
- Attachment B—proposed Mail Classification Schedule language required by 39 C.F.R. § 3020.31(f); and

- Attachment C—a letter dated May 17, 1985, responsive to 39 C.F.R. § 3020.32(e), that describes the Postal Service’s interpretation of the Private Express Statutes as they apply to the overseas transmission of computer software in the form of magnetic media.

Postal Service Response to Order No. 1794. At the Commission’s direction, the Postal Service on August 2, 2013, filed a notice of determination by the Board of Governors approving the proposal contained in the Postal Service Request. See Governors’ Determination. On August 5, 2013, the Postal Service filed cost and revenue data together with a certification of its accuracy and an explanation why competitive products in total will be in compliance with 39 U.S.C. § 3633(a)(1) and (3). Library Reference NP-1.

Support accompanying Postal Service Reply Comments. Attached to the Postal Service Reply Comments were the Declarations of Steven W. Monteith, Virginia J. Mayes, A. Thomas Bozzo, and Mark Shoeman. Accompanying those declarations were Library References NP-3 through NP-6. Included in those library references were Netflix and GameFly First-Class mail volumes, a Permit Reply Mail Cost Study, Permit Reply Mail volumes, and a document entitled “IBIS World Report”.

V. ISSUES RAISED BY COMMENTERS

Commenters in these dockets raise three principal issues, as well as several additional issues. The principal issues are: (1) whether the Postal Service’s Request is necessary in light of the clarification of the price cap rules provided in Order No. 1807; (2) whether the proposed Round-Trip Mailer product meets the requirements of 39 U.S.C. § 3642(b)(1); and (3) whether the Postal Service complied with the requirements of 39 U.S.C. § 3642(b)(3). Ancillary issues include the accuracy of the Postal Service’s cost estimates, whether Round-Trip Mailers may also be sent as First-Class or Standard letters, the correct MCS language for the proposed product, and whether additional clarification regarding price cap treatment is necessary.

A. Viability of the Postal Service's Request

Both Netflix and GameFly assert that the Request is unnecessary in light of Order No. 1807's clarification of the Commission's price cap rules. Netflix Comments at 3; GameFly Comments at 30-31. The Postal Service responds by arguing that Order No. 1807 does not require the Postal Service to withdraw its Request and that the Postal Service continues to believe that the Round-Trip Mailer product would be properly classified as a competitive product. Postal Service Reply Comments at 27. The Commission concludes that the Postal Service has the right in the captioned dockets to pursue the proposal contained in its Request. See 39 U.S.C. § 3642(a).

B. 39 U.S.C. § 3642(b)(1)

As a threshold issue, Netflix contends that the proposed Round-Trip Mailer cannot be transferred to the competitive product list because it is not a "product" within the meaning of 39 U.S.C. § 102(6). Netflix Comments at 4-5. The Postal Service replies that the definition of "product" has historically been construed broadly and that its proposed product has distinct cost and market characteristics. Postal Service Reply Comments at 3-4.

However, the primary focus of the parties' comments is on whether the Postal Service's proposal meets the statutory requirements for classification as a competitive product. Netflix Comments at 4-9; GameFly Comments at 3-30; Postal Service Reply Comments at 5-25.

Netflix contends that the Postal Service exercises market power over the proposed product, that it will be extremely difficult to ensure that the proposed product covers its attributable costs, and that the Postal Service's definition of the relevant market is flawed. Netflix Comments at 5-9.

GameFly begins its comments by outlining a legal framework for analyzing the Postal Service's market power, describing seven factors it believes the Commission

should take into account. GameFly Comments at 5-11. These factors are: (1) whether the Postal Service can raise prices significantly without losing sufficient demand to make the increase unprofitable; (2) the interchangeability of products and services within the market; (3) the cross-elasticity of demand for entertainment provided via streaming, retail kiosks, and mail; (4) the price, type, grade, and quality of interchangeable services or products; (5) whether the competition constrains not only the delivered price of DVDs, but also the transportation price; (6) whether the Postal Service has met its burden of proof in its request; and (7) whether the Request is based on the present situation, not speculation about future changes. *Id.* GameFly goes on to argue that the Postal Service has failed to provide the appropriate cross-elasticity estimates. *Id.* at 11-14. Finally, it provides an extensive argument that internet streaming and retail kiosks are not adequate substitutes for DVDs delivered by mail. *Id.* at 14-30.

The Public Representative expresses agreement with Netflix and GameFly and contends that the proposed product “is a Market Dominant product subject to the mailbox monopoly.” Public Representative Comments at 1.

The Postal Service responds that it lacks dominance in the relevant market. Postal Service Reply Comments at 5-25. The Postal Service begins by arguing that its Request should be evaluated in accordance with Federal antitrust principles. *Id.* at 6-7. The Postal Service asserts that, for purposes of its Request, the relevant market is the market for “provision of access to digitized entertainment content,” not the market for Round-Trip DVD mailers. *Id.* at 5, 10-11. It bases this assertion on the interchangeability of various methods for delivering digitized entertainment content, arguing that: (1) Federal antitrust law does not recognize separate markets for interchangeable products based on delivery method; (2) consumers consider the delivery methods interchangeable; (3) suppliers of entertainment content view delivery methods as interchangeable; (4) GameFly is subject to competition from firms that use other delivery methods; and (5) the Postal Service does not have a monopoly on its own

products apart from the monopoly provided by the Private Express statutes. *Id.* at 10-20.

In addition, the Postal Service contends that it does not exercise market dominance with respect to Round-Trip DVD mailers due to competition in the downstream market for digital entertainment content. *Id.* at 9-10. It also asserts that rapid changes in methods of providing access to digitized content prevent the Postal Service from exercising market dominance. *Id.* at 20-21. Finally, the Postal Service argues that classifying the Round-Trip Mailer product as competitive will not harm GameFly, but that classifying the Round-Trip Mailer product as market dominant has the potential to cause serious harm to the Postal Service. *Id.* at 22-25.

C. 39 U.S.C. § 3642(b)(3)

The Public Representative, MMAVault, and CafeDVD express concerns regarding the impact of the Postal Service's proposal on small business concerns.

The Public Representative argues that the Postal Service has failed to take into consideration the views of users of the proposed Round-Trip Mailer product and to give due regard to the impact of the proposal on small business concerns, as required by subparagraphs (B) and (C) of 39 U.S.C. § 3642(b)(3).

MMAVault and CafeDVD oppose the classification of the proposed Round-Trip Mailer as a competitive product. MMAVault Comments at 1; CafeDVD Comments at 1. Both parties cite the Postal Service's history of using pricing power to discriminate against mailers and express concern about the additional pricing power available to the Postal Service with respect to competitive products. *Id.* Additionally, the Public Representative states that she has contacted "many small DVD mailers" and that all of those small mailers oppose the classification of the Round-Trip Mailer product as competitive. Public Representative Comments at 2. CafeDVD also opposes the 500 piece mailing minimum for access to Round-Trip Mailer rates, explaining that it mails 50 to 200 pieces to customers each day at the First-Class single-piece two-ounce flats

price and so is unable to avail itself of Round-Trip Mailer rates. CafeDVD Comments at 1.

D. Additional Issues

Netflix and GameFly raise additional concerns in their comments, some of which elicited reply comments.

As part of its critique of the Postal Service's Request, GameFly argues that the Commission should give no weight to the non-public cost estimates for the proposed Round-Trip Mailer because the estimates are unreliable and overstate handling costs and because GameFly did not have adequate opportunity to review the estimates. GameFly Comments at 31-32. The Postal Service replies that its cost estimates comply with 39 U.S.C. §§ 3642(b) and 3633(a), that the declaration of Sander Glick is "unsupported, mistaken, or both, and should be given no weight by the Commission," and that GameFly had adequate time to review the cost estimates. Postal Service Reply Comments at 26.

GameFly requests that the Commission reconsider its decision in Order No. 1807 not to prohibit Round-Trip DVD mail from being sent as generic First-Class or Standard Letter Mail. GameFly Comments at 32-34. Netflix opposes this request, arguing that it would deprive Netflix and the Postal Service the flexibility to respond to changing operational conditions and that it would deprive Netflix of "the opportunity to avail itself of a class of mail that is sealed against inspection." Netflix Reply Comments at 2-3, 5-7.

GameFly urges the Commission to maintain existing definitions and classification requirements for DVD mail until the Postal Service clarifies precisely what changes it proposes and provides interested parties an adequate opportunity to comment. GameFly Comments at 34-36.

Finally, Netflix provides its own analysis of the price cap clarification provided in Order No. 1807 and requests that the Commission "confirm [its] exposition of the cap

discussion in Order No. 1807 in order to remove any uncertainty on the cap issue.”
Netflix Reply Comments at 10.

VI. COMMISSION ANALYSIS

The Commission finds that the record developed to date is not yet adequate to permit reasoned decision making. The shortcomings in the record are explained in part by the context in which the Postal Service’s proposal is offered. The Postal Service filed its Request in Docket No. C2009-1R, in response to Order No. 1763. That Order directed the Postal Service to elect one of two remedies described by the Commission and to notify the Commission of its election no later than July 30, 2013. Order No. 1763 at 39-40. On July 19, 2013, the Postal Service requested additional time to comply with Order No. 1763, a request the Commission denied.¹³ On July 25, 2013, the Postal Service filed a motion for reconsideration and clarification of Order No. 1763.¹⁴ The Postal Service filed this Request on July 26, 2013. See Request at 2.

Given the compressed timeframe in which the Postal Service was required to prepare and file its response to Order No. 1761 and given the fact the Postal Service addressed each of the relevant elements of 39 C.F.R. §§ 3020.31 (Contents of a request) and 3020.32 (Supporting justification) when it filed its Request, the Commission denies GameFly’s motion for dismissal of the Postal Service’s Request.

Similarly, the Commission denies GameFly’s motion to strike the Postal Service Reply Comments. GameFly argues the comprehensiveness of the Postal Service’s Reply Comments and the supporting material constitute an attempt to deny GameFly a

¹³ United States Postal Service Motion for Extension of Time in Which to Comply with Order No. 1763, July 19, 2013; Order No. 1787, Order Denying Motion for Extension of Time, July 23, 2013. See *also* Reply of GameFly, Inc., in Opposition to July 19 USPS Motion to Stay, July 23, 2013.

¹⁴ United States Postal Service Motion for Reconsideration and Clarification of Order No. 1763, July 25, 2013. See *also* Response of GameFly, Inc., to USPS Motion for Reconsideration and Clarification of Order No. 1763, August 1, 2013; Order No. 1807, Order on Reconsideration and Clarification, August 13, 2013.

fair opportunity to challenge the basis offered by the Postal Service to support its proposal. The Postal Service responds that the arguments and information presented in its Reply Comments and non-public library references are well-focused responses to points raised in the GameFly Comments and supporting materials. The Commission finds GameFly has offered insufficient justification for the extraordinary measure of striking the Postal Service Reply Comments and related library references.

The Commission's rules provide four options for Commission action upon review of comments relating to a request to transfer a product from the market dominant to the competitive product list. First, the Commission may simply approve the request. 39 C.F.R. § 3020.34(a). Second, the Commission may provide the Postal Service an opportunity to modify its request. *Id.*, § 3020.34(c). Third, it may institute further proceedings to consider the request "if it finds that there is a substantial likelihood that the modification is inconsistent with statutory policies or Commission rules." *Id.*, § 3020.34(b). Such proceedings may include scheduling a conference, soliciting written comments, providing a period for discovery, scheduling a hearing, or "other action as the Commission may consider appropriate." *Id.*, § 3020.35. Finally, the Commission may "[d]irect other action as the Commission may consider appropriate." *Id.*, § 3020.34(d).

The Postal Service's Request and the comments on the Request have raised complex and novel issues of law and fact, some of which are questions of first impression for the Commission. The Commission believes it would benefit substantially from further exploration of the legal and factual arguments concerning the scope of the market in which the Postal Service participates and the likely impact of the proposal on competitors and small business concerns, among other issues.

In light of the complexity and novelty of the issues raised by the Postal Service's Request, and their potential application in important future dockets, the Commission determines that, pursuant to 39 C.F.R. § 3020.34(d), GameFly and other interested persons should be given an opportunity to address the arguments and supporting

information presented by the Postal Service in its Reply Comments and associated library references. The Postal Service should, in turn, be given an opportunity to respond to arguments and information offered by GameFly or other parties. Upon review of any additional comments and the Postal Service's response, the Commission will evaluate whether further proceedings consistent with 39 C.F.R. § 3020.35 are necessary.

Accordingly, the Commission grants, in part, GameFly's request that it be given additional time to file a response to the Postal Service Reply Comments. GameFly argues that 20 days from the date it was given access to the non-public library references that accompany the Postal Service Reply Comments are an appropriate period to allow it to prepare a response. GameFly Motion at 8. It explains that it chose this timeframe because 20 days "is essentially the same interval established by the Commission for responses to the Postal Service's July 26 Request." *Id.* This argument appears to be rooted in GameFly's conclusion that the Postal Service Reply Comments are more akin to a request than to reply comments. See *id.* at 2 (arguing that the Postal Service "withheld virtually all of its case until August 22").

As explained above, GameFly has not presented sufficient information for the Commission to conclude that the Postal Service Reply Comments are anything but a reply to the GameFly Comments. As the Postal Service points out, in these dockets, the Commission provided 7 days for parties to file reply comments. Postal Service Answer at 9. Therefore, 7 days appears to be the more appropriate interval for a GameFly response. However, the date that is 7 days after the Postal Service Reply Comments is August 29, 2013. Recognizing that GameFly could not have been expected to file reply comments before this Order was issued, the date for filing a response to the Postal Service Reply Comments shall be 7 days after the issuance of this Order. Netflix and other interested persons, including the Public Representative, may also file such responses at or before that time.

The Commission also grants the Postal Service's request that it be permitted to respond to "new issues or facts" raised by a response. See Postal Service Answer at 10. The Postal Service may file its response to any comments submitted by GameFly or any other person in response to this Order not later than 14 days after the issuance of this Order.

After receiving and evaluating the additional responses, the Commission will take such further action as it deems appropriate pursuant to 39 C.F.R. § 3020.34.

VII. ORDERING PARAGRAPHS

It is ordered:

1. GameFly's motion to dismiss the Postal Service Request is denied.
2. GameFly's motion to strike the Postal Service Reply Comments is denied.
3. Pursuant to 39 C.F.R. § 3020.34, GameFly's motion for leave to respond to the Postal Service Reply Comments is granted in part. GameFly and any other person, including the Public Representative, may respond to the Postal Service Reply Comments not later than September 11, 2013.

4. Pursuant to 39 C.F.R. § 3020.24, the Postal Service's request for leave to respond to GameFly's response is granted. The Postal Service may respond to any comments submitted by GameFly or any other person in response to this Order not later than September 18, 2013.

By the Commission.

Ruth Ann Abrams
Acting Secretary